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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,) No. CR 07-0295 MAG
15 Plaintiff,) GOVERNMENT'S MOTION IN LIMINE
16 v.) PURSUANT TO FED. R. EVID. 201 and
17) FED. R. CRIM. P. 26.1 TO TAKE
18 NICOLE LEA MAYS,) JUDICIAL NOTICE OF ADJUDICATIVE
19 Defendant.) FACTS RE: HEROIN AND MARIJUANA
20) ARE CONTROLLED SUBSTANCES
21)
22) PRE-TRIAL: April 1, 2008
23) TIME: 2:00 p.m
24) COURT: The Honorable Elizabeth D.
25) Laporte
26)
27)
28)

I. INTRODUCTION

23 The United States moves *in limine* pursuant to Rule of the Federal Rules of Evidence and
24 Rule 26.1 of the Federal Rules of Criminal Procedure to take judicial notice of certain
25 adjudicative facts regarding the status of heroin and marihuana as controlled substances. In
26 particular, the government asks the Court to take judicial notice of the following:

27 (1) Under United States federal law, HEROIN is a schedule I controlled substance
28 pursuant to: 21 U.S.C. § 812(c)(b)(10); and

(2) Under United States federal law, MARIHUANA is a schedule I controlled substance pursuant to: 21 U.S.C. § 812(c)(c)(10).

(3) Under United States federal law, there is no legal prescription for HEROIN pursuant to 21 U.S.C. § 812(b)(1)(C) and 21 U.S.C. § 812(c)(b)(10).

(4) Under United States federal law, there is no legal prescription for MARIHUANA pursuant to 21 U.S.C. § 812(b)(1)(C) and 21 U.S.C. § 812(c)(c)(10).

II. ARGUMENT

Rule 201 of the Federal Rules of Evidence provides:

(a) **Scope of rule.** This rule governs only judicial notice of adjudicative facts.

(b) **Kinds of facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is . . . (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

* * *

(d) **When mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

* * *

(g) **Instructing jury.** . . . In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

A. The Court Should Take Judicial Notice of United States Law

The Court may take judicial notice of the fact that, under United States federal law, heroin is listed as a schedule I controlled substance. 21 U.S.C. § 812(c)(b)(10).

The Court may take judicial notice of the fact that, under United States federal law, marihuana is listed as a schedule I controlled substance. 21 U.S.C. § 812(c)(c)(10).

The Court may take judicial notice of the fact that, under United States federal law, there is no legal prescription for heroin. 21 U.S.C. § 812(b)(1)(C) and 21 U.S.C. § 812(c)(b)(10).

The Court may take judicial notice of the fact that, under United States federal law, there is no legal prescription for marihuana. 21 U.S.C. § 812(b)(1)(C) and 21 U.S.C. § 812(c)(c)(10).

Because this is black-letter law, the Court should instruct the jury that it is required to accept the foregoing as conclusive fact. (This type of judicial notice is therefore more equivalent to “legislative facts” than “adjudicative facts,” and could therefore be given along with the other jury instructions.) In the alternative to giving judicial notice of these facts, the Court could also instruct the jury of the above-reference facts.

CONCLUSION

The Court should take judicial notice of the foregoing facts, or, in the alternative, instruct the jury of the above-referenced facts.

DATED: March 18, 2008

Respectfully submitted,

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/s/
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